STATE OF MINNESOTA

IN SUPREME COURT

A20-1027

Original Jurisdiction

Per Curiam
Concurring, Thissen, J.

In re Petition for Disciplinary Action Against
Richard Lee Swanson, a Minnesota Attorney,
Registration No. 0173423.

Filed: December 22, 2021
Office of Appellate Courts

Susan M. Humiston, Director, Binh T. Tuong, Managing Attorney, Office of Lawyers Professional Responsibility, Saint Paul, Minnesota, for petitioner.

Richard Lee Swanson, Chaska, Minnesota, pro se.

S Y L L A B U S

1. The referee's finding that no mitigating factors were present was not clearly erroneous.

2. An indefinite suspension with no right to petition for reinstatement for 6 months is the appropriate discipline for respondent, who failed to represent clients diligently and competently, failed to follow court scheduling orders, continued to practice law while suspended, settled a malpractice claim in exchange for a client's agreement to forego filing an ethics complaint, agreed to represent a party despite a clear conflict of interest, failed to promptly withdraw from the matter once the conflict of interest was discovered, entered into an improper flat fee agreement with a client, and failed to timely return unearned fees to a client.

Suspended.

Considered and decided by the court without oral argument.

O P I N I O N

PER CURIAM.

The Director of the Office of Lawyers Professional Responsibility (Director) filed a petition for disciplinary action against respondent Richard Lee Swanson. We appointed a referee. After a hearing, the referee determined that Swanson committed professional misconduct during his representation of two clients, B.J. and L.F. The misconduct involving B.J. included failing to diligently and competently represent his client's interests, failing to meet court-imposed deadlines, continuing to practice law while suspended for failing to comply with a condition of a prior discipline order, and agreeing to settle a potential malpractice claim in exchange for B.J.'s agreement to forego filing an ethics complaint. The misconduct involving L.F. included accepting representation despite a clear conflict of interest, failing to promptly withdraw from the matter once the conflict of interest was discovered, entering into an improper flat fee agreement, and failing to promptly refund unearned fees to L.F. The referee found four aggravating factors and no mitigating factors were present and recommended a 180-day suspension. Swanson does not challenge the referee's findings concerning his misconduct; rather, he asserts that there are mitigating factors the referee failed to consider. We conclude that the referee did not clearly err by finding that no mitigating factors were present and that the appropriate discipline for Swanson's misconduct is an indefinite suspension, with no right to petition for reinstatement for 6 months.

FACTS

Swanson was admitted to practice law in Minnesota in 1986. He has a lengthy disciplinary history. Swanson has been admonished five times and publicly reprimanded once. Most recently, in March 2015, we suspended Swanson for a minimum of 90 days. *See In re Swanson (Swanson I)*, 860 N.W.2d 677, 678 (Minn. 2015) (order). Our suspension order required Swanson to successfully complete the Multistate Professional Responsibility Examination (MPRE) within 1 year of the date of the order. *Id.* at 679.

On June 18, 2015, we conditionally reinstated Swanson and placed him on probation for 2 years. *In re Swanson (Swanson II)*, 877 N.W.2d 190, 190 (Minn. 2016) (order). However, Swanson did not comply with the requirement from our March 2015 suspension order that he successfully complete the MPRE, so we indefinitely suspended him, effective March 31, 2016. *Id.* After Swanson successfully completed the MPRE, we reinstated him on October 4, 2016, and continued his probation until December 17, 2017. *In re Swanson (Swanson III)*, 885 N.W.2d 668, 668 (Minn. 2016) (order).

On August 4, 2020, the Director filed a petition for disciplinary action against Swanson, alleging that Swanson committed professional misconduct in two client matters. The first involved a land dispute in which Swanson's client claimed that construction on his neighbors' property caused flooding. The second matter involved domestic assault charges against a man and a guardianship matter involving the man's wife, who was the alleged victim in the domestic assault case.

Swanson's Representation of B.J.

In July 2015, B.J. contacted Swanson about a potential civil lawsuit. B.J.'s neighbors had constructed a dam on their property, which B.J. believed caused flooding on and damage to his property. Swanson agreed to pursue a lawsuit on B.J.'s behalf. On March 15, 2016, Swanson filed a complaint based on information he received from B.J. Swanson performed no research to verify the information, and the first complaint named the incorrect party as the defendant and contained incorrect legal descriptions of the land at issue.

Swanson was suspended from the practice of law on March 31, 2016, for failure to pass the MPRE. Swanson timely notified B.J. that he had been suspended and stated that he would arrange for another attorney to handle the matter until he was reinstated. No other attorney ever worked on the matter, and Swanson failed to notify opposing counsel of his suspension. *See Swanson II*, 877 N.W.2d at 191 (requiring notice to opposing counsel). Swanson continued to work on the B.J. matter while suspended. On April 21, Swanson's employee served the summons and complaint on the defendants, with Swanson notarizing the affidavit of service. Swanson met with B.J. on a regular basis to discuss the litigation and continued to meet with other prospective clients in his office.

Swanson failed to represent B.J. competently and diligently. The district court granted the defendants a default judgment on the first complaint and awarded the defendants over $5,500 in attorney fees and costs after Swanson failed to respond to counterclaims. Swanson admitted to B.J. that the judgment was his fault for failing to respond and personally paid B.J. the full amount of the judgment.

On July 15, 2016—while still suspended—Swanson filed a second complaint, which was again met with counterclaims. Swanson failed to respond to these counterclaims for nearly 3 months until an ultimatum from opposing counsel prompted him to do so.[1] The court's scheduling order required Swanson to disclose all expert witnesses and provide their expert reports by February 20, 2017. But he did not initially *contact* a potential expert witness until February 23, 2017. The scheduling order also required the parties to attend mediation by February 24, 2017. Although he attended the mediation, Swanson failed to provide the required preliminary materials, such as a demand letter. In April, B.J. signed a contract for over $10,000 of expert work and paid at least $1,000 toward this contract. B.J. signed the agreement at Swanson's advice, not knowing that the deadline to disclose expert witnesses had already passed.

Swanson never notified opposing counsel of his proposed expert witness. Instead, opposing counsel first learned of the expert witness when his name appeared in Swanson's proposed joint statement of the case. Swanson delivered a draft of the joint statement to opposing counsel on April 4, 2017—more than 6 weeks after the deadline to disclose expert witnesses. Even at this late date, Swanson still had not provided any expert reports. Indeed, the expert witness had apparently not even *prepared* his report at this point, as Swanson had failed to respond to the expert's communications. Due to the lateness of the disclosure,

[1] We reinstated Swanson to the practice of law on October 4, 2016, *Swanson III*, 885 N.W.2d at 668, after he filed the second complaint but before he filed his response to the counterclaims.

the defendants moved to exclude B.J.'s expert witness. The district court granted the defendants' motion and held that B.J. would not be able to call expert witnesses at trial.

Swanson withdrew from the case, but later told B.J. that he would file an appeal challenging the court's order excluding expert witnesses. Swanson never filed the appeal. Because he was unable to present expert testimony, B.J. was forced to dismiss his claims with prejudice and was left without recourse. Swanson offered B.J. $300,000 to settle any potential malpractice claims arising from the matter. Swanson conditioned this offer on B.J. agreeing not to file an ethics complaint. B.J. accepted the settlement but later filed an ethics complaint with the Director after Swanson ceased making payments on the settlement.

Swanson's Representation of L.F.

On October 2, 2017, the state charged W.F. with misdemeanor domestic assault of his wife, L.F., and the district court issued a domestic abuse no-contact order. Both the criminal complaint and the no-contact order specifically list L.F. as the victim in the case. W.F. hired Swanson as his defense attorney. On October 6, 2017, Scott County filed an emergency guardianship/conservatorship action for L.F. The district court appointed Lutheran Social Services as L.F.'s guardian and conservator and separately appointed an attorney to represent L.F.

On October 14, 2017, K.F.—W.F. and L.F.'s daughter—asked Swanson to represent L.F. in the guardianship matter. Although he knew at the time that L.F. was the alleged victim in W.F.'s case, and that he was representing W.F., Swanson agreed to represent L.F. Swanson did not investigate the underlying facts, so he was not aware that

L.F. already had a court-appointed guardian and attorney. Swanson accepted a $3,000 retainer check that drew directly from the joint account of W.F. and L.F. Neither L.F. nor her guardian were aware of or consented to Swanson's representation or to the payment. Although no retainer agreement existed, Swanson cashed the retainer check and deposited the full amount directly into his business account. Swanson did not provide a retainer agreement until October 27, 2017. This agreement described the retainer as nonrefundable, failed to state that Swanson would return the money if he did not complete the representation, failed to identify the client, and was signed only by Swanson.

Swanson filed certificates of representation opposing L.F.'s civil commitment on October 24, 2017—without ever speaking to L.F. L.F.'s appointed guardian called Swanson immediately upon learning of his involvement. She informed Swanson that L.F. was unable to consent to the representation and that L.F. was represented by court-appointed counsel. On October 27, 2017, L.F.'s appointed counsel sent Swanson a letter stating that he already represented L.F. Despite these notices, Swanson did not notify the court that he was withdrawing from the matter until December 15, 2017. During this time, Swanson continued to represent W.F. in the ongoing criminal matter and L.F.'s family continued to believe that Swanson represented L.F. in the guardianship matter. Swanson did not formally withdraw from the guardianship matter until February 7, 2018.

L.F.'s guardian filed an ethics complaint with the Director over Swanson's conduct. At the Director's instruction, Swanson fully refunded the $3,000 retainer payment on April 25, 2019—over 1 year after his withdrawal from the case, and almost 18 months after he accepted the payment.

Disciplinary Hearing

On August 4, 2020, the Director filed a petition for disciplinary action; after Swanson responded, we appointed a referee. At the hearing before the referee, Swanson testified in his own defense. He admitted some of his misconduct but attempted to minimize it and shift the blame to others. Swanson argued that, during his suspension, his work was not the practice of law—though while he was suspended, he told B.J. that he "shouldn't be doing this." Swanson admitted filing a factually incorrect complaint, but he blamed B.J. for providing false information and accepted no responsibility for his own failure to verify his client's words. Although he had personally visited B.J.'s property to inspect the damage, Swanson suggested that his misconduct did not cause any harm because B.J.'s claims were fraudulent and the lawsuit would have failed anyway. Swanson claimed that he never filed an appeal because B.J. never returned his call. And although he first proposed the settlement and wrote the terms it contained, Swanson argued that B.J. blackmailed him into making the settlement by threatening to "take [his] license away."

In his testimony about the L.F./W.F. matter, Swanson neither tried to establish that he was unaware of the conflict of interest nor claimed that he had obtained client consent or otherwise attempted to comply with the Rules of Professional Conduct. Nor did he try to demonstrate that he had taken steps to screen his representation of the two clients from each other. Rather, Swanson maintained that simultaneously representing both W.F. and L.F. was harmless because he "knew" W.F.'s case would not go to trial. Finally, Swanson claimed that he took so long to return the retainer fee because he did not know where to

send the money. But he had contact information for all parties involved, and he also never asked where to send the money.

Following the hearing, the referee found that Swanson committed multiple acts of professional misconduct. In the B.J. matter, the referee concluded that Swanson's incompetent representation and lack of diligence—including failing to verify the information in the complaint; failing to timely respond to counterclaims; failing to timely file witness, exhibit, and expert witness disclosures; and failing to file an appeal—violated Minn. R. Prof. Conduct 1.1,[2] 1.3,[3] 3.2,[4] and 3.4(c).[5] Swanson's failure to follow court scheduling orders violated Minn. R. Prof. Conduct 1.3, 3.4(c), and 8.4(d).[6] Swanson's work while suspended was the unauthorized practice of law in violation of Minn. R. Prof. Conduct 3.4(c) and 5.5(a).[7] His failure to notify opposing counsel of his suspension

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[2] "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation." Minn. R. Prof. Conduct 1.1.

[3] "A lawyer shall act with reasonable diligence and promptness in representing a client." Minn. R. Prof. Conduct 1.3.

[4] "A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client." Minn. R. Prof. Conduct 3.2.

[5] "A lawyer shall not . . . knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists." Minn. R. Prof. Conduct 3.4(c).

[6] "It is professional misconduct for a lawyer to . . . engage in conduct that is prejudicial to the administration of justice." Minn. R. Prof. Conduct 8.4(d).

[7] "A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction . . . ." Minn. R. Prof. Conduct 5.5(a).

violated Rule 26, Rules on Lawyers Professional Responsibility (RLPR).[8] Settling a potential malpractice claim in exchange for B.J.'s agreement to forego filing his ethics complaint violated Minn. R. Prof. Conduct 8.4(d).

In the L.F. matter, the referee found that Swanson's failure to discover the conflict of interest before agreeing to the representation, along with his failure to immediately withdraw after he learned of the conflict, violated Minn. R. Prof. Conduct 1.1 and 1.3. Representing both W.F. and L.F. without client consent created a conflict of interest, in violation of Minn. R. Prof. Conduct 1.1 and 1.7(a)(2).[9] Sending letters opposing civil commitment without ever speaking to the client about her wishes violated Minn. R. Prof. Conduct 1.2(a)[10] and 1.4.[11] Finally, Swanson's conduct concerning the retainer, including describing the fees as nonrefundable, failing to deposit the advance payment into a trust

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[8] Rule 26(b), RLPR, requires a lawyer to notify clients, opposing counsel, and the tribunal in any litigation matters "as of the date of the resignation or the order imposing discipline" of the suspension.

[9] "[A] lawyer shall not represent a client if the representation involves a concurrent conflict of interest." Minn. R. Prof. Conduct 1.7(a). A concurrent conflict of interest exists when "there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person, or by a personal interest of the lawyer." *Id*., (a)(2).

[10] "[A] lawyer shall abide by a client's decisions concerning the objectives of representation and . . . shall consult with the client as to the means by which they are to be pursued." Minn. R. Prof. Conduct 1.2(a).

[11] Lawyers must "promptly inform the client of any decision or circumstance" requiring the client to give informed consent, "reasonably consult with the client" about how to pursue the client's goals, and "keep the client reasonably informed about the status of the matter." Minn. R. Prof. Conduct 1.4.

account, and failing to promptly return the $3,000, violated Minn. R. Prof. Conduct 1.5(b)(1),[12] 1.5(b)(3),[13] 1.15(c)(4)–(5),[14] and 1.16(d).[15]

The referee found that Swanson had harmed B.J., L.F., and "the public and the legal profession." The referee found four aggravating factors: 1) Swanson's disciplinary history, 2) the fact that Swanson was on probation, 3) Swanson's failure to appreciate his errors and lack of remorse, and 4) Swanson's lengthy experience as a lawyer. The referee found that no mitigating factors were present. The referee adopted the Director's suggested discipline and recommended an indefinite suspension from the practice of law, with no right to petition for reinstatement for 180 days.

ANALYSIS

Swanson does not dispute the referee's findings or the conclusion that he committed professional misconduct. Instead, he asserts that there are mitigating circumstances that

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[12] Although lawyers "may charge a flat fee for specified legal services," any such fee agreement must inform the client "that the client has the right to terminate the client-lawyer relationship; and that the client will be entitled to a refund of all or a portion of the fee if the agreed-upon legal services are not provided." Minn. R. Prof. Conduct 1.5(b)(1).

[13] "Fee agreements may not describe any fee as nonrefundable or earned upon receipt . . . ." Minn. R. Prof. Conduct 1.5(b)(3).

[14] "A lawyer shall . . . promptly pay or deliver to the client or third person as requested the funds, securities, or other properties in the possession of the lawyer which the client or third person is entitled to receive." Minn. R. Prof. Conduct 1.15(c)(4). "A lawyer shall . . . deposit all fees received in advance of the legal services being performed into a trust account and withdraw the fees as earned." *Id*. at (c)(5).

[15] "Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as . . . refunding any advance payment of fees or expenses that has not been earned or incurred." Minn. R. Prof. Conduct 1.16(d).

should be considered in determining the appropriate discipline. We therefore begin by determining whether the referee clearly erred by finding that no mitigating factors were present. We then determine the appropriate discipline in this case.[16]

I.

The respondent in a discipline case has the burden of alleging and proving any mitigating factors. *In re Hummel*, 839 N.W.2d 78, 82 (Minn. 2013). Because Swanson ordered a transcript, the referee's findings of fact and conclusions are not binding. Rule 14(e), RLPR. But these findings and conclusions are still entitled to "great deference." *In re MacDonald*, 962 N.W.2d 451, 460 (Minn. 2021). We review the referee's conclusions about mitigating factors—either their presence or absence—for clear error. *In re Fairbairn*, 802 N.W.2d 734, 740 (Minn. 2011); *In re Aitken*, 787 N.W.2d 152, 158 (Minn. 2010). A finding is clearly erroneous when it leaves us "with the definite and firm conviction that a mistake has been made." *In re Bonner*, 896 N.W.2d 98, 105 (Minn. 2017) (citation omitted) (internal quotation marks omitted).

As a preliminary matter, Swanson argues that he was improperly pressured into testifying at the hearing and that this impacted the referee's finding that no mitigating factors were present. The Director called Swanson as a witness. Swanson initially stated that he was not going to testify. The referee told him that he could not refuse because he had been called as a witness in a civil case. Swanson was then duly sworn and testified.

[16] We originally scheduled this case for oral argument. In response to Swanson's motion that we consider the matter without oral argument, no oral argument was held, and the matter was decided on the briefs submitted by the parties.

After the Director questioned him, Swanson voluntarily spoke and provided testimony on his own behalf. The next day, Swanson again testified at length and does not argue that he was pressured to do so. Swanson now argues that the referee's "pressure" shows that the referee was biased and that his initial decision not to testify was incorrectly used to impeach his credibility. But Swanson does not cite anything in the record showing bias. The referee's findings and conclusions are supported by detailed citations to the record and testimony—and nowhere in the findings or conclusions does the referee mention Swanson's initial refusal to testify. The referee did not clearly err by directing Swanson to testify.

Swanson also argues that the referee erred by failing to find mitigating factors. But he never specifies which mitigating factors he believes should have been found. "[A] referee's failure to make a factual finding" is not clearly erroneous unless the basis for that finding "is raised as an issue in the proceedings before the referee." *In re Tigue*, 843 N.W.2d 583, 588 (Minn. 2014); *see also In re Tayari-Garrett*, 866 N.W.2d 513, 520 (Minn. 2015) ("[The respondent] did not ask the referee to find any mitigating factors . . . . As a result, her claim that the referee clearly erred by declining to find any mitigating factors for her misconduct fails."). At the conclusion of the evidentiary hearing, the referee gave Swanson an opportunity to file a brief and proposed findings of fact and conclusions of law. Swanson filed neither. The issue of mitigating factors was not properly before the

referee.[17] Holding the referee's lack of findings to be clear error would reward Swanson for failing to argue his case. Therefore, we conclude that the referee did not clearly err by finding that no mitigating factors were present.

II.

We turn next to the appropriate discipline for Swanson. Both the referee and the Director recommend that we indefinitely suspend Swanson for 180 days. Swanson maintains that his conduct warrants a suspension of no longer than 30 days.

We give "great weight" to the referee's recommended discipline. *In re Butler*, 960 N.W.2d 540, 552 (Minn. 2021). But "we retain ultimate responsibility for determining [the] appropriate discipline." *In re Montez*, 812 N.W.2d 58, 66 (Minn. 2012). We impose discipline "not to punish the attorney, but rather to protect the public, to protect the judicial system, and to deter future misconduct by the disciplined attorney as well as by other attorneys." *In re Albrecht*, 779 N.W.2d 530, 540 (Minn. 2010) (citation omitted) (internal quotation marks omitted). To determine the appropriate discipline, we consider four factors: (1) the nature of the misconduct, (2) the cumulative weight of the violations, (3) the harm to the public, and (4) the harm to the legal profession. *Butler*, 960 N.W.2d at 552. We also consider aggravating and mitigating factors and attempt to impose discipline consistent with similar cases. *Id.*

[17] Even if Swanson had properly argued for the presence of mitigating factors, we are not persuaded that the referee clearly erred by finding that no mitigating factors were present. The record regarding Swanson's behavior is mixed at best, and it can hardly be said that rejecting Swanson's rosy view of his conduct was clear error on the part of the referee. *See In re Quinn*, 946 N.W.2d 583, 590 (Minn. 2020) (explaining that the referee "was free to credit" the testimony of one witness over another).

A.

We first consider the nature of Swanson's misconduct. Swanson's misconduct includes his (1) unauthorized practice of law while suspended, (2) failure to comply with court scheduling orders, (3) repeated instances of client neglect and incompetent representation, (4) failure to comply with the rules regarding conflicts of interest, and (5) failure to timely refund unearned fees.

Practicing law while suspended is serious misconduct as it does not merely constitute the unauthorized practice of law; it is also contempt of court. *In re Hunter*, 473 N.W.2d 866, 869 (Minn. 1991). We generally impose a suspension for such violations, as "impos[ing] a public reprimand for respondent's unauthorized practice of law would make the original . . . disciplinary suspension imposed by this court largely meaningless." *In re Kennedy*, 873 N.W.2d 133, 133 (Minn. 2016) (order). Swanson practiced law while suspended for not complying with our prior disciplinary order. We have treated such conduct more harshly than when a lawyer practices law while suspended for failure to pay registration fees or meet CLE requirements. *Compare In re Ruffing*, 883 N.W.2d 222, 222 (Minn. 2016) (order) (imposing a 30-day suspension for practicing law while on a disciplinary suspension), *with In re DuFresne*, 640 N.W.2d 337, 337–38 (Minn. 2002) (order) (imposing a public reprimand for practicing law while suspended for failure to pay registration fee and neglecting client matters).

Failure to comply with court orders and schedules is also serious misconduct. *In re Lundeen*, 811 N.W.2d 602, 608 (Minn. 2012). We have imposed suspensions for failing to meet court deadlines. *See, e.g.*, *In re Walsh*, 872 N.W.2d 741, 750 (Minn. 2015)

(6-month suspension); *In re Nathanson*, 812 N.W.2d 70, 81 (Minn. 2012) (90-day suspension). Swanson repeatedly failed to comply with court scheduling orders by missing expert witness and mediation disclosure deadlines.

"Perhaps no professional shortcoming is more widely resented than procrastination." Minn. R. Prof. Conduct 1.3 cmt. 3. A pattern of client neglect is generally sufficient to warrant a suspension even absent other misconduct. *In re Greenman*, 860 N.W.2d 368, 376 (Minn. 2015); *In re Brooks*, 696 N.W.2d 84, 88 (Minn. 2005). Swanson repeatedly neglected client matters by failing to meet deadlines.

Failing to abide by the rules regarding conflicts of interest is also serious misconduct. *In re Udeani*, 945 N.W.2d 389, 397 (Minn. 2020). Conflicts of interest have led to lengthier suspensions even when there was no evidence that any clients were harmed by the conflict. *See, e.g.*, *In re Perl*, 407 N.W.2d 678, 682 (Minn. 1987) (imposing a 1-year suspension even though "there [was] no evidence that any client was harmed" by the conflict of interest). Swanson knowingly represented both a defendant and the defendant's alleged victim—an obvious conflict of interest.

Failure to promptly return unearned fees to a client is also serious misconduct. *In re Taplin*, 837 N.W.2d 306, 312 (Minn. 2013). Swanson held an unearned $3,000 fee for over a year and half without justification. The nature of Swanson's misconduct favors more severe discipline.

B.

Next, we address "the cumulative weight" of the disciplinary violations "as a whole." *In re Eskola*, 891 N.W.2d 294, 299–300 (Minn. 2017) (citation omitted) (internal

quotation marks omitted). We also distinguish between an "isolated incident" and "multiple instances of mis[conduct] occurring over a substantial amount of time." *Id.* at 300 (alteration in original) (citation omitted) (internal quotation marks omitted). Swanson's misconduct goes beyond a brief lapse in judgment. *See In re Stoneburner*, 882 N.W.2d 200, 206 (Minn. 2016). Over the course of several years, he violated 14 different rules of professional conduct, and he violated some of these rules multiple times. The cumulative weight of Swanson's misconduct favors more severe discipline.

C.

Next, we determine whether, and to what extent, Swanson's misconduct harmed the public. When assessing the harm to the public, we consider "the number of clients harmed [and] the extent of the client injuries." *In re Rambow*, 874 N.W.2d 773, 779 (Minn. 2016). Swanson committed serious misconduct in two separate client matters. His misconduct resulted in a judgment against B.J. for over $5,000, forced B.J. to dismiss his claims, and foreclosed B.J. from filing an appeal. In addition, B.J. was forced to pay at least $1,000 for the services of an expert witness that could not be used. Swanson also harmed L.F. by improperly accepting the $3,000 retainer and failing to return it for over a year and a half. Swanson's harm to the public favors more severe discipline.

D.

Swanson's misconduct also harmed the legal profession. Practicing law while suspended "harm[s] the legal profession and do[es] not represent the virtues the public has the right to expect of lawyers." *In re Grigsby*, 815 N.W.2d 836, 846 (Minn. 2012). Swanson's delays and missed deadlines impeded court business. And his repeated acts of

neglect and incompetence "harmed the legal profession by undermining the public's trust in the competence, diligence, and integrity of lawyers." *In re Fru*, 829 N.W.2d 379, 390 (Minn. 2013) (concluding that a lawyer's pattern of incompetence and neglect harmed the legal profession). Swanson's harm to the legal profession favors more severe discipline.

E.

We also consider aggravating and mitigating factors. *Butler*, 960 N.W.2d at 552. Here the referee found four aggravating factors and no mitigating factors. As discussed above, it was not clearly erroneous for the referee to find that no mitigating factors were appropriate.

The referee found four aggravating factors: 1) Swanson's disciplinary history, 2) the fact that Swanson was on probation during the present misconduct, 3) his lack of remorse,[18] and 4) Swanson's lengthy experience. Although Swanson argues on appeal that he showed remorse, the referee affirmatively concluded that Swanson was not remorseful, and, as previously noted, Swanson submitted no briefing or proposed findings to the contrary. Swanson does not attempt to challenge any of the other findings. The findings are supported in the record, and all four are valid aggravating factors. *See, e.g.*, *MacDonald*,

[18] We agree with the concurrence that Swanson should not receive greater discipline because he disputed the claims of the Director or otherwise defended his actions on behalf of his clients. We disagree that this is what occurred here. Swanson did not merely attempt to dispute charges of professional misconduct or argue that his actions were consistent with an interpretation of the rules of professional conduct. He made disingenuous statements, he blamed his clients for his own failures, and he was dishonest with the referee. Even when he admitted misconduct, he often failed to recognize why what he did was wrong. It was within the referee's discretion to conclude that this pattern of behavior showed a lack of remorse.

962 N.W.2d at 467 (disciplinary history); *In re Kennedy*, 864 N.W.2d 342, 350 (Minn. 2015) (probation); *In re Severson*, 860 N.W.2d 658, 670 (Minn. 2015) (lack of remorse); *In re Sea*, 932 N.W.2d 28, 37 (Minn. 2019) (experience). The presence of four aggravating factors and no mitigating factors favors more severe discipline.

F.

Finally, we consider similar cases to ensure that our disciplinary decisions are consistent with prior sanctions. The most similar case to Swanson's is *In re Coleman*, where we imposed a 6-month suspension for similar misconduct. 793 N.W.2d 296, 309 (Minn. 2011). In *Coleman*, the attorney failed to correctly address a conflict of interest resulting from representing two codefendants in a criminal matter, and in a different matter, failed to appear in court. *Id*. at 300–01. The attorney also violated court rules for withdrawing from representation and failed to protect the client's interests upon termination of representation. *Id.* at 306–07. Coleman also failed to communicate with these clients. *Id.* at 304, 307. Similar aggravating factors were also present. *See id.* at 309 (explaining that three aggravating factors were present: disciplinary history, committing misconduct while on probation, and lack of remorse).

In light of these facts, we conclude that the appropriate discipline for Swanson is an indefinite suspension, with no right to petition for reinstatement for 6 months.

Accordingly, we order that:

1. Respondent Richard Lee Swanson is indefinitely suspended from the practice of law, effective 14 days from the date of this opinion, with no right to petition for reinstatement for 6 months.

2. Respondent shall comply with Rule 26, RLPR (requiring notice of suspension to clients, opposing counsel, and tribunals), and shall pay $900 in costs, *see* Rule 24, RLPR.

3. Respondent may petition for reinstatement pursuant to Rule 18(a)–(d), RLPR. Reinstatement is conditioned on the successful completion of the written examination required for admission to the practice of law by the State Board of Law Examiners on the subject of professional responsibility, *see* Rule 18(e)(2), RLPR; Rule 4.A.(5), Rules for Admission to the Bar (requiring evidence that an applicant has successfully completed the Multistate Professional Responsibility Examination), and satisfaction of continuing legal education requirements, *see* Rule 18(e)(4), RLPR.

Suspended.

C O N C U R R E N C E

THISSEN, Justice (concurring).

I concur in the court's decision. I write separately to reiterate my concern about the reflexive use of "experience" as an aggravating factor. *In re Nelson*, 933 N.W.2d 73, 75 (Minn. 2019) (Thissen, J., concurring); *In re Sea*, 932 N.W.2d 28, 42 (Minn. 2019) (Thissen, J., concurring in part, dissenting in part).

An aggravating factor, by definition, is a factor that renders the lawyer's conduct in the particular case more egregious than a typical case of lawyer misconduct. Here, the referee stated, in a single sentence: "Respondent has significant experience in the practice of law." More than that should be required. The referee should provide at least some explanation about why the lawyer's experience renders the lawyer's conduct in that particular case more egregious than the typical case.

There are certainly many types of misconduct—for instance, failing to meet court-imposed deadlines, continuing to practice law while suspended for failing to comply with a condition of a prior discipline order—that any lawyer should understand regardless of experience. *But cf. In re Quinn*, 946 N.W.2d 583, 593 (Minn. 2020) (Thissen, J., concurring in part, dissenting in part) (finding that extensive experience as a bankruptcy lawyer was an aggravating factor where misconduct involved mishandling of bankruptcy case). Otherwise, more experienced lawyers should always receive more severe discipline than less experienced lawyers: essentially, as a matter of law, a lawyer with 20 years of experience deserves more severe discipline than a lawyer with 15 years of experience who deserves more severe discipline than a lawyer with 10 years of experience who deserves

more severe discipline than a lawyer with 2 years of experience. That seems wrong and arbitrary.

I also reiterate my concern about imposing greater discipline under the guise of lack of remorse simply because a lawyer attempts to defend himself against charges of professional misconduct and disputes allegations of misconduct by attempting to explain his actions or contesting the legal basis for the claims. *See id.* at 596; *Sea*, 932 N.W.2d at 45.

Because consideration of these two aggravating factors does not impact what the proper discipline should be, I concur in the court's decision.